

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 2:16-CR-20008-001

DAVID HURL LEMMON

DEFENDANT

ORDER

The Court has received a report and recommendations (Doc. 260) from Chief United States Magistrate Judge Mark E. Ford. The Chief Magistrate Judge recommends that the Court dismiss Defendant's motion (Doc. 208) to vacate pursuant to 28 U.S.C. § 2255 with prejudice and deny any request for a Certificate of Appealability. The Court extended Plaintiff's deadline to file objections to June 27, 2022. Because Plaintiff receives filings in this case via mail, three days were added to this deadline pursuant to Federal Rule of Civil Procedure 6(d).¹ Therefore, the last day for Plaintiff to file objections was June 30, 2022. Plaintiff's objections were not filed until July 1, 2022 and are, therefore, untimely.

Regardless, the Court has conducted a de novo review of those portions of the report and recommendation to which Plaintiff has objected. 28 U.S.C. § 636(b)(1)(C). Plaintiff's objections offer neither law nor fact requiring departure from the Chief Magistrate Judge's findings, which otherwise contain no clear error. The report and recommendation is ADOPTED IN ITS ENTIRETY.

¹ Though all filings in this case have been made on Defendant's criminal docket, because the report and recommendation concerns Defendant's motion to vacate pursuant to 28 U.S.C. § 2255, this is a civil rather than criminal proceeding, and the Federal Rules of Civil Procedure apply. See *Baker v. United States*, 334 F.2d 444, 447 (8th Cir. 1964) (first citing *Taylor v. United States*, 229 F.2d 826, 832 (8th Cir. 1956); and then citing *Skinner v. United States*, 326 F.2d 594 (8th Cir. 1964)).

IT IS THEREFORE ORDERED that Defendant's motion (Doc. 208) to vacate pursuant to 28 U.S.C. § 2255 is DISMISSED WITH PREJUDICE. No Certificate of Appealability shall issue.

Judgment will be entered separately.

IT IS SO ORDERED this 6th day of July, 2022.

/s/ P. K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE